



November 12, 2001

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-5234

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154806.

The Travis County Domestic Relations Department (the "department") received a request for copies of a particular case file. You state that you will release many of the documents that are responsive to the request. You claim, however, that the submitted information is not subject to the Public Information Act (the "Act") pursuant to section 552.003(1)(B) of the Government Code. In the alternative, you claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered your arguments, the exceptions you claim, and have reviewed the submitted information.

We note that records of the judiciary are specifically excepted from the provisions of the Act. *See* Gov't Code § 552.003(1)(B). In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

The judiciary exception . . . is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

Id. at 152. The court in *Benavides* found the Webb County Juvenile Board not to be a part of the judiciary. In so finding, the court reasoned that an analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested. *See id.* at 151; *see also* Open Records Decision No. 572 (1990). In *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App.--Houston [14th Dist.] 1996, writ denied), the court held that a guardian ad litem in a child custody case was entitled to absolute judicial immunity. In reaching this conclusion, the court considered the function of the guardian ad litem. If the guardian ad litem was functioning as an actual functionary or arm of the court, the ad litem should be entitled to judicial immunity. *See Delcourt*, 919 S.W.2d at 784. The court noted that other courts had determined that the function of a guardian ad litem in child custody cases was basically to act as an extension of the court when the ad litem is investigating facts and reporting to the court what placement was in the child's best interest. *See id.* at 785 (citing *Ward v. San Diego County Dep't of Social Services*, 691 F. Supp. 238, 240 (S.D. Cal. 1988)). The court concluded that so long as the appointment of the guardian ad litem contemplates the ad litem acting as an extension of the court, the ad litem is entitled to absolute judicial immunity.

We understand in this instance that the court by order appointed the department to act as guardian ad litem of the child in this child custody case. *See* Fam. Code § 230.004(a)(6) (domestic relations office may represent child as guardian ad litem where termination of parent-child relationship is sought or where conservatorship of or access to child is contested). You state that the department investigated allegations and obtained records and information from the Department of Public Safety, the Department of Protective and Regulatory Services, Child Protective Services, and the subject minor child. You also state that the department used this information to generate reports and make recommendations to the court. Therefore, we understand that the department, as guardian ad litem of the subject minor child, is acting "as an arm of the court." *See Delcourt*, 919 S.W.2d at 781; *see also* Open Records Decision No. 646 at 4 (1996) (finding that "the function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Public Information Act"). Accordingly, we conclude that the submitted information is not subject to disclosure under the Act and that the department need not comply with the request. Because we conclude that the submitted information is not subject to the Act, we need not reach your other claims.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

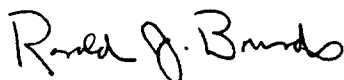
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 154806

Enc. Submitted documents

cc: Ms. Marie Olivo
814 King Albert Street
Austin, Texas 78745
(w/o enclosures)